

determination of those portions of the Findings and Recommendations to which objection is made. 28 U.S.C. § 636(b)(1).

After carefully balancing the equities for and against a stay of this insurance bad faith case pending the resolution of the appeal of the underlying case², Judge Ostby concluded that a stay of limited duration was appropriate. Plaintiff claims Magistrate Judge Ostby erred in concluding that if the Court of Appeals reversed the judgment against the law firm in the underlying case, McCollough *may* have no third-party bad faith case against the malpractice insurer. Plaintiff argues that the law is well-established that the issues in a UTPA claim are distinct from those in the underlying suit and that the UTPA claim focuses on what the insurer knew during the investigation of the claim, citing *Graf v. Continental Western Ins. Co.*, 89 P.3d 22, 27 (Mont 2004).

Aside from the fact that Judge Ostby did not conclusively state that a reversal of the underlying judgment would affect its UTPA claims in this case, there were several other reasons why she found a stay appropriate. For example, Judge Ostby also noted that JRL would be prejudiced if attorney-client or work product were revealed to Plaintiff in discovery and then the Ninth Circuit

²Plaintiff obtained a favorable judgment against a debt collection law firm in *McCollough v. Johnson, Rodenburg & Lauringer*, CV-07-166-BLG-RFC-CSO.

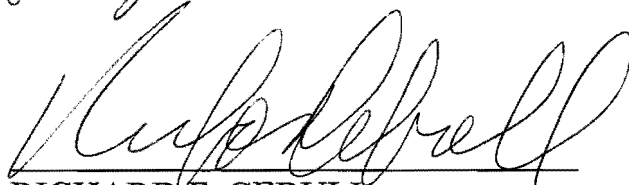
remanded the underlying case for a new trial. Although a resolution of the underlying appeal in JRL's favor may not resolve the UTPA claims at issue in this case, the Ninth Circuit's decision is sure to have an impact. Plaintiff's objection is overruled.

After a de novo review, the Court determines the Findings and Recommendation of Magistrate Judge Ostby are well grounded in law and fact and adopts them in their entirety.

Accordingly, **IT IS HEREBY ORDERED** that Minnesota Lawyers's Motion for Stay of Proceedings (Doc. 9) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order.

DATED this 3rd day of February, 2006.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE